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No. 05-502

In the Supreme Court of the United States

BRIGHAM CITY, UTAH, PETITIONER

v.

CHARLES W. STUART, ET AL.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF UTAH

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE SUPPORTING PETITIONER

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QUESTIONS PRESENTED

1. Whether, when law enforcement officers enter a residence in response to what reasonably appears to be an emergency, the constitutionality of their warrantless entry under the Fourth and Fourteenth Amendments turns upon the officers' subjective motivation.

2. Whether an ongoing and tumultuous fight that has disrupted neighbors at 3:00 in the morning constitutes the type of emergency that would render a warrantless entry into the home constitutional under the Fourth and Fourteenth Amendments.

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INTEREST OF THE UNITED STATES

This case presents the questions (i) whether the constitutionality of a warrantless entry into a home in an emergency turns on the officers' subjective motivations, and (ii) whether officers' observation of an ongoing violent altercation inside a residence justifies a warrantless entry. Federal law enforcement officers make warrantless entrances into residences in emergencies that pose a threat to life and safety, such as when responding to the sound of gunshots, intervening when ongoing domestic violence or child abuse is overheard, rescuing kidnapping victims, or searching for hurricane victims. In addition, the federal government prosecutes cases in which evidence has been obtained by state and local police officers during entries into residences in emergency situations. The United States thus has a substantial interest in the Court's disposition of this case.

STATEMENT

1. On July 23, 2001, at approximately 3:00 a.m., four Brigham City, Utah, police officers responded to a complaint about a loud party at a private residence. Pet. App. 46. After witnessing two underage males drinking alcohol, *id.* at 2, the officers entered the backyard. From there, the officers could see an ongoing, "loud, tumultuous," and "belly igerent" altercation involving four adults and a juvenile in the kitchen. *Id.* at 4; Def. Mem. in Support of Mot. to Suppress 2; see Pet. App. 2-3. At one point, the juvenile "swung a fist and struck one of the adults in the face." Pet. App 2. The adults "struggle[d] to regain control of the juvenile." *Id.* at 18. Two officers "opened the screen door and 'hollered' to identify themselves," but "no one heard them." *Id.* at 2. The officers then entered the kitchen, but still "had to shout above the din multiple times before the occupants became aware of their presence." *Id.* at 32. The officers subsequently took the adults, all of whom were guests in the home, into custody and charged them with disorderly conduct, intoxication, and contributing to the delinquency of a minor. *Id.* at 3; Def. Mem. in Support of Mot. to Suppress 1.

2. Respondents moved to suppress evidence obtained from the officers' entry and the subsequent arrest. The trial court granted the motion. Pet. App. 46-48. The court held that the officers had probable cause to enter the backyard. *Id.* at 47. The court also acknowledged that "there was a loud, tumultuous thing going on," and that, as a result, "the occupants probably would not have heard" the officers if they had knocked. *Ibid.* The court nevertheless ruled that no exigent cir-

cumstances justified the entry into the house without the officers first knocking. *Ibid.*

3. A divided Utah Court of Appeals affirmed. Pet. App. 34-45. The majority held that the altercation did not "pose[] an immediate serious threat or create[] a threat of escalating violence," in part because "this is not a 'domestic violence' situation." *Id.* at 40-41 & n.2.

Judge Bench dissented, Pet. App. 42-45, considering it "nonsensical to require officers charged with keeping the peace, to witness this degree of violence and take no action until they see it escalate further," *id.* at 44.

4. a. The Utah Supreme Court affirmed. Pet. App. 1-33. The court held unanimously that the officers' entry was not justified to render "emergency aid," *id.* at 11-15, 27, 33, but was closely divided on the question whether exigent circumstances supported the entry, *id.* at 15-25, 26-33.

With respect to the emergency aid doctrine, the court ruled that a warrantless entry was not authorized because the officers lacked an "objectively reasonable belief that an unconscious, semi-conscious, or missing person feared injured or dead [was] in the home." Pet. App. 13 (internal quotation marks omitted). The court further held that the "paramount" purpose of the intrusion must be to "enhance the prospect of administering appropriate medical assistance," *ibid.* (citation omitted), for a "serious bodily injury," *id.* at 14. The officers' entry in this case, the court held, failed that test because the officers entered to "arrest[] the adults for alcohol related offenses, and provid[ed] no medical assistance whatsoever." *Ibid.*

The supreme court also held that exigent circumstances did not justify the entry. At the outset, the court ruled that the officers had probable cause to enter

the house based on "the blow struck by the juvenile," but that the blow did not justify a warrantless entry. Pet. App. 9. While acknowledging that the distinction is "artificial and simplistic," the court explained that the requirements of exigent circumstances, rather than the emergency aid doctrine, apply when police "are pursuing a law enforcement mission, not acting as caretakers." *Id.* at 16. The court then held that the adults' "assault" on the juvenile and the juvenile's assault on one of the adults were insufficient to establish exigent circumstances. *Id.* at 19. The court reasoned that persons in a residence may "engage in acts that meet the legal definition of assault, thereby creating probable cause," that the police are powerless to stop in the absence of a warrant. *Id.* at 18. The court also "speculat[ed]" that the officers might have been able to "quell[] the disturbance by making their presence known" through the screen door. *Id.* at 20. The court then concluded that the officers committed constitutional error by "announc[ing] their presence" inside rather than outside the screen door. *Ibid.*

b. Judge Durrant, joined by Judge Wilkins, dissented from the holding that exigent circumstances did not support the entry. Pet. App. 25-33. The dissent reasoned that the Constitution does not require police officers "who personally witness an ongoing physical altercation in a residence" to "be spectators in the face of ongoing violence" and "remain rooted onlookers, waiting passively for violence to escalate to a point at which severe harm is likely to occur." *Id.* at 26.

SUMMARY OF ARGUMENT

The Fourth Amendment permits officers to enter a residence without a warrant when, under all of the circumstances, a reasonable officer could conclude that an impending threat to life or safety warrants intervention and when the scope of the intrusion is reasonable in relation to the nature of the emergency. Whether the officers were subjectively motivated to enforce the law or to render aid has no constitutional relevance. This Court has repeatedly refused to import into the Fourth Amendment's mandate of reasonableness an inquiry into the mindset of individual police officers making split-second judgments in the midst of rapidly evolving events. No different rule should apply here. Evenhanded law enforcement and protection against arbitrary action are best achieved by focusing on the objective justifications for an officer's actions, not on his subjective intent.

The entry in this case was objectively reasonable. The loud and tumultuous five-person fight that the police saw and heard posed a reasonable risk of harm to the lives and safety of those inside the home. The disruption of neighbors in the middle of the night, combined with evidence of alcohol abuse, gave no sign of abating and, in fact, posed a reasonable risk of escalating. Indeed, domestic disputes as a class—especially those that involve alcohol or drugs—pose a significant risk of injury to both the participants and the police. The common law has long permitted entry in such circumstances to protect life and safety. The Fourth Amendment does the same.

ARGUMENT

I. THE FOURTH AMENDMENT PERMITS A WARRANTLESS HOME ENTRY WHEN THERE IS A REASONABLE BASIS TO CONCLUDE THAT A THREAT TO LIFE OR SAFETY NECESSITATES POLICE INTERVENTION AND THE SCOPE OF THE INTRUSION IS REASONABLE

The Fourth Amendment, made applicable to the States through the Fourteenth Amendment, *Payton* v. *New York*, 445 U.S. 573, 576 (1980), provides:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

U.S. Const. Amend. IV.

The "essential purpose" of the Fourth Amendment's proscriptions "is to impose a standard of 'reasonableness' upon the exercise of discretion" by law enforcement "in order to safeguard the privacy and security of individuals against arbitrary invasions." *Delaware* v. *Prouse*, 440 U.S. 648, 653-654 (1979) (footnote and citation omitted); see *Illinois* v. *Rodriguez*, 497 U.S. 177, 186 n.* (1990). The "touchstone" of the constitutional inquiry is "the reasonableness in all the circumstances" of the law enforcement practice at issue. *Maryland* v. *Wilson*, 519 U.S. 408, 411 (1997) (citation omitted).

A. The Fourth Amendment Permits Warrantless Entries When Reasonably Undertaken To Protect Lives Or Safety

The Fourth Amendment embodies a strong preference for warrants before entry into or search of a home. See, *e.g.*, *Kirk* v. *Louisiana*, 536 U.S. 635, 636, 638 (2002) (per curiam). The Court has long recognized, however, that in some circumstances, such as the hot pursuit of a felon and the imminent destruction of evidence, "the exigencies of the situation" can give rise to a compelling need for prompt and thus warrantless entry. *Mincey* v. *Arizona*, 437 U.S. 385, 394 (1978).[1] Where fulfilling the law enforcement interests at stake will not brook the delay of obtaining a warrant, a warrantless entry and search of a home is permissible if the police officer's actions are "objectively reasonable under the Fourth Amendment." *Ibid.*

One circumstance in which a warrantless entry is objectively reasonable is when an entry is undertaken to protect human life and safety, such as when officers could "reasonably believe that a person within is in need of immediate aid." *Mincey*, 437 U.S. at 392.[2] "The Fourth Amendment does not require police officers to

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[1] See *Michigan* v. *Tyler*, 436 U.S. 499, 509-510 (1978) (entry for reasonable time to fight fire and investigate its source); *United States* v. *Santana*, 427 U.S. 38, 42-43 (1976) (hot pursuit); *Schmerber* v. *California*, 384 U.S. 757, 770-771 (1966) (imminent loss of evidence); see also *Camara* v. *Municipal Court*, 387 U.S. 523, 539 (1967) (prompt inspections without a warrant "in emergency situations").

[2] See *Flippo* v. *West Virginia*, 528 U.S. 11, 14 (1999) (per curiam); *Thompson* v. *Louisiana*, 469 U.S. 17, 21-22 (1984) (per curiam); *McDonald* v. *United States*, 335 U.S. 451, 454 (1948) (noting situation "where the officers, passing on the street, hear a shot and a cry for help and demand entrance in the name of the law").

delay in the course of an investigation if to do so would gravely endanger their lives or the lives of others." *Warden* v. *Hayden*, 387 U.S. 294, 298-299 (1967); see *Wayne* v. *United States*, 318 F.2d 205, 212 (D.C. Cir.) (opinion of Burger, J.) ("[A] warrant is not required to break down a door to enter a burning home to rescue occupants or extinguish a fire, to prevent a shooting or to bring emergency aid to an injured person."), cert. denied, 375 U.S. 860 (1963).

Police officers routinely perform community caretaking and public safety functions, in addition to their traditional law enforcement roles.[3] In any of those roles, police may encounter a variety of circumstances that can reasonably necessitate emergency, warrantless entries of a residence. For example, in the wake of a shooting or similar violence, police may need to search quickly for wounded victims, as well as to ensure that no hidden perpetrators remain who could continue the attack or ambush emergency medical personnel. In *Mincey*, *supra*, the Court affirmed the propriety of the law enforcement agents' decision, following a homicide, to "look[] about quickly for other victims" following a shooting, 437 U.S. at 388, and to "make a prompt warrantless search of the area to see if there are other victims or if a killer is still on the premises," *id.* at 392. Cf. *Maryland* v. *Buie*, 494 U.S. 325, 327 (1990) (permitting a "protective sweep" to "protect the safety of police officers or others" incident to an arrest).[4]

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[3] See, *e.g.*, *Cady* v. *Dombrowski*, 413 U.S. 433, 441 (1973); 3 Wayne R. LaFave, *Search and Seizure* § 6.6, at 451 (4th ed. 2004).

[4] See also, *e.g.*, *United States* v. *Martins*, 413 F.3d 139, 145 (1st Cir.) (emergency entry proper based on "the location of one of the shooting victims immediately outside the apartment, the marijuana smoke within, and the presence of young, apparently unsupervised children"),

Officers also may develop a reasonable basis for concluding that an individual is suffering or in imminent danger of suffering harm when they respond to domestic violence calls, overhear screams or calls for "help," discover materials with a high risk of explosion, or learn the location of children or other vulnerable individuals who are in danger. See *United States* v. *Pachinger*, No. 04-10783 (11th Cir. Jan. 3, 2005), slip op. 3-8 (emergency entry to identify drugs taken by a juvenile who was in medical distress after being abducted and raped by the room's occupant), vacated on other grounds, 126 S. Ct. 240 (2005); *State* v. *Plant*, 461 N.W.2d 253, 259-260, 262-263 (Neb. 1990) (emergency entry proper where three young children either "were unaccounted for and had been left unattended for several hours," or else were in the custody of abusive father who was suspected of beating their infant sibling to death earlier that day).[5]

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cert. denied, 126 S. Ct. 644 (2005); *United States* v. *Chipps*, 410 F.3d 438, 442-443 (8th Cir. 2005) (emergency entry proper where police received a report of an assault and found a 20 to 30 foot trail of blood leading to the defendant's house); *State* v. *Fisher*, 686 P.2d 750, 761-762 (Ariz.) (where police knew that a woman had been murdered and that the employee she had visited shortly before she was killed was missing, the "entry and search for other possible homicide victims falls within the emergency aid doctrine"), cert. denied, 469 U.S. 1066 (1984).

[5] See also *United States* v. *Martinez*, 406 F.3d 1160, 1162-1164 (9th Cir. 2005) (emergency entry warranted where a 911 call reported domestic violence, crying woman was outside, and screams continued from inside the house); *United States* v. *Rhiger*, 315 F.3d 1283, 1285, 1288 (10th Cir.) (emergency entry upheld to shut down power to a methamphetamine laboratory that "posed a threat of explosion to its inhabitants, to the agents present at the scene, and to the other residents in [the] immediate neighborhood"), cert. denied, 540 U.S. 836 (2003); *United States* v. *Koplin*, No. CR02-209R (W.D. Wash. Nov. 21, 2002), slip op. 2-6 (emergency entry of motel room upheld where police learned that a known child sex offender was traveling interstate with an

In addition, a 911 call, reports of dead or unconscious bodies, or requests for assistance from friends and family may lead officers reasonably to conclude that a person needs immediate aid, outside the context of criminal law enforcement. See *United States* v. *Bradley*, 321 F.3d 1212, 1215 (9th Cir. 2003) ("The possibility of a nine-year-old child in a house in the middle of the night without the supervision of any responsible adult is a situation requiring immediate police assistance."); *Wayne*, 318 F.2d at 213 (opinion of Burger, J.) (if police "ha[d] paused for a warrant with the risk that the 'unconscious

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unrelated 11-year-old girl and might be armed); *United States* v. *Brown*, No. ACM 31997, 1997 WL 119744, at *1-*3 (A.F. Ct. Crim. App. Mar. 4, 1997) (emergency entry justified where a "young boy 'ran through the door * * * [and] yelled that his dad was beating up his mother'"; telephone call was abruptly cut off; and bloodied victim appeared at the door), review denied, 48 M.J. 21 (C.A.A.F. 1997); *State* v. *Drennan*, 101 P.3d 1218, 1224-1225, 1232 (Kan. 2004) (emergency entry proper where defendant had a history of domestic violence, neighbor witnessed violence and heard a scream, "'a little bit of a ruckus,' and then silence"); *Benefiel* v. *State*, 578 N.E.2d 338, 345 (Ind. 1991) (emergency entry proper when police received reports that two missing girls were being held against their will), cert. denied, 504 U.S. 987 (1992); *State* v. *Collins*, 543 A.2d 641, 652 (R.I. 1988) (discovery of "an infant victim of a child snatching or kidnaping created an emergency or exigent circumstance permitting a warrantless entry"), overruled on other grounds by *State* v. *Rios*, 702 A.2d 889 (R.I. 1997); *State* v. *Boggess*, 340 N.W.2d 516, 524-525 (Wis. 1983) (entry proper where reliable report of severe child abuse "indicates a potential need for that child to receive immediate medical attention," and that "children would be subjected to further abuse at any time, which could have resulted in serious injury or even death"); *State* v. *Crabb*, 835 N.E.2d 1068, 1071 (Ind. Ct. App. 2005) (entry proper based on "credible evidence" that a small child was "being exposed to both risks from explosions due to the flammability of the chemicals used in producing methamphetamine and from the effects that ether can have on the respiratory system"); LaFave, *supra*, § 6.5(d) at 434-435 n.177.

woman' might die while papers were being drawn they could surely merit censure").[6]

While the circumstances giving rise to an emergency need for entry are varied, the constitutional rationale for permitting a warrantless entry is the same: the "need to protect or preserve life or avoid serious injury is justification for" any attendant intrusion on privacy. *Mincey*, 437 U.S. at 392 (quoting *Wayne*, 318 F.2d at 212 (opinion of Burger, J.)). "Precious as th[e] right" to privacy in the home is, "it must yield to" another individual's "right to be rescued from death or terrible harm." *State* v. *Carlson*, 548 N.W.2d 138, 143 (Iowa 1996). Moreover, such emergencies require "necessarily swift action predicated upon the on-the-spot observations of the officer on the beat[, which] * * * historically has not been, and as a practical matter could not be, subjected to the warrant procedure." *Buie*, 494 U.S. at 331-332.

B. The Existence Of An Emergency Justifying A Warrantless Entry Turns Upon An Objective Analysis Of The Reasonableness Of The Officers' Conduct, Not Their Subjective Motivation

The Utah Supreme Court joined a number of other courts in holding that an emergency entry to render aid

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[6] See also *United States* v. *Stafford*, 416 F.3d 1068, 1074 (9th Cir. 2005) (emergency entry upheld where police received two reports of a possible dead body, large quantities of blood, feces, and hypodermic needles, and evidence of a brawl); *Wofford* v. *State*, 952 S.W.2d 646, 651 (Ark. 1997) ("Frequently, the report of a death proves inaccurate and a spark of life remains, sufficient to respond to emergency police aid.") (quoting *Patrick* v. *State*, 227 A.2d 486, 489 (Del. 1967)); *State* v. *Blades*, 626 A.2d 273, 279-280 (Conn. 1993) (emergency entry proper where relatives reported victim missing, they repeatedly expressed concern for her welfare based on a history of domestic violence, defendant had given a "patently false reason" for sending his children away, and officer observed blood on the door).

requires officers to have as their predominant subjective purpose the provision of emergency aid, rather than criminal investigation, reasoning that the motive inquiry substitutes for a probable cause requirement and prevents exploitation of the exception.[7] That approach, however, has generated disarray in the case law and confusion for officers, with courts artificially dichotomizing emergencies into "exigent circumstances" entries when probable cause of a crime also exists, and "emergency aid" entries when it does not. See, *e.g.*, Pet. App. 11-17; *State* v. *Ryon*, 108 P.3d 1032, 1043 n.4 (N.M. 2005). Some courts have then tried to identify varying levels of urgency for the two classes, which in turn may require sifting through a list of "factors."[8] Some courts also insist that an "emergency aid" entry must be divorced from the officers' law enforcement role and treated as "community caretaking," while another ascribes to it a third, *sui generis* purpose.[9]

This Court should reject that enterprise, with its rarely fruitful (but invariably litigation-generating) search for a non-law-enforcement motive—a process

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[7] See, *e.g.*, Pet. App. 12, 14; *United States* v. *Cervantes*, 219 F.3d 882, 890 (9th Cir. 2000), cert. denied, 532 U.S. 912 (2001); *State* v. *Ryon*, 108 P.3d 1032, 1045-1046 (N.M. 2005); *People* v. *Hebert*, 46 P.3d 473, 478-479 (Colo. 2002); *State* v. *Mountford*, 769 A.2d 639, 645 (Vt. 2000); *People* v. *Ray*, 981 P.2d 928, 933 (Cal. 1999), cert. denied, 528 U.S. 1187 (2000); *People* v. *Mitchell*, 347 N.E.2d 607, 610 (N.Y.), cert. denied, 426 U.S. 953 (1976).

[8] See, *e.g.*, Pet. App. 13-14, 19; *Ryon*, 108 P.3d at 1043 n.4, 1044-1045; *Carlson*, 548 N.W.2d at 142.

[9] Compare Pet. App. 16; *Ryon*, 108 P.3d at 1042; *Hebert*, 46 P.3d at 478-479; *Ray*, 981 P.2d at 933 ("totally unrelated"); *id.* at 938 ("Any intention of engaging in crime-solving activities will defeat the * * * exception even in cases of mixed motives."); *Fisher*, 686 P.2d at 763, with *Mountford*, 769 A.2d at 643-644 n.*.

that the Utah Supreme Court itself acknowledged to be "artificial and simplistic" (Pet. App. 16). Cf. *United States* v. *Banks*, 540 U.S. 31, 36, 41 (2003) (rejecting effort to transform the Fourth Amendment's test of reasonableness under all the circumstances "into a set of sub-rules" or "categories and protocols"). The Court should adopt instead an objective inquiry into the reasonableness of emergency entries to protect lives and safety. That approach better conforms with the Constitution's textual command of reasonableness, more closely hews to this Court's precedent, will bring needed coherence to the law, and will make the boundaries of the exception more comprehensible and reliable for officers on the ground confronting situations "filled with confusion and ambiguity." *Wayne*, 318 F.2d at 212 (opinion of Burger, J.).[10]

1. This Court has held, "almost without exception," that whether the actions of police officers violate the Fourth Amendment depends upon "an objective assessment of an officer's actions in light of the facts and circumstances then known to him." *Scott* v. *United States*, 436 U.S. 128, 137 (1978). The officer's subjective motivation is irrelevant.

> [T]he fact that the officer does not have the state of mind which is hypothecated by the reasons which

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[10] See *United States* v. *Holloway*, 290 F.3d 1331, 1337-1338 (11th Cir. 2002), cert. denied, 537 U.S. 1161 (2003); *Wayne*, 318 F.2d at 212 (opinion of Burger, J.) ("If we could expect that patrolmen from police cruisers would be able to pinpoint the instant when they stopped treating this as a civil emergency, if they did, and began thinking of it in criminal terms, we would be asking them to resolve, under pressure and in minutes, a most subtle and delicate legal and constitutional problem on which * * * judges cannot agree after months of study and deliberation.").

> provide the legal justification for the officer's action does not invalidate the action taken as long as the circumstances, viewed objectively, justify that action.

Id. at 138.[11]

The Court has so ruled because, in the absence of a warrant, the Fourth Amendment is concerned with whether a search is "unreasonable," U.S. Const. Amend. IV, and that "concern with 'reasonableness' allows certain actions to be taken in certain circumstances, *whatever* the subjective intent." *Devenpeck* v. *Alford*, 543 U.S. 146, 153 (2004) (quoting *Whren* v. *United States*, 517 U.S. 806, 814 (1996)). Indeed, focus on "an objective assessment of the officer's actions in light of the facts and circumstances confronting him at the time, * * * and not on the officer's actual state of mind at the time" pervades Fourth Amendment law. *Maryland* v. *Macon*, 472 U.S. 463, 470 (1985) (quotation marks omitted).[12]

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[11] See *Bond* v. *United States*, 529 U.S. 334, 338 n.2 (2000) ("[T]he subjective intent of the law enforcement officer is irrelevant in determining whether that officer's actions violate the Fourth Amendment * * *; the issue is not his state of mind, but the objective effect of his actions."); *Graham* v. *Connor*, 490 U.S. 386, 397 (1989) ("prior cases make clear" that the "subjective motivations of the individual officers * * * ha[ve] no bearing on whether a particular seizure is 'unreasonable' under the Fourth Amendment").

[12] See, *e.g.*, *Devenpeck*, 543 U.S. at 153 (an officer's "subjective reason for making the arrest" need not coincide with facts providing probable cause); *Ohio* v. *Robinette*, 519 U.S. 33, 38-39 (1996) (reasonableness of duration of a traffic stop); *Whren*, 517 U.S. at 813-815 (reasonableness of traffic stop); *Florida* v. *Jimeno*, 500 U.S. 248, 250-252 (1991) (scope of a consent to search); *Horton* v. *California*, 496 U.S. 128, 138 (1990) (observation of items in "plain view" need not be inadvertent); *United States* v. *Villamonte-Marquez*, 462 U.S. 579, 584 n.3 (1983) (brief, suspicionless detention of a ship for a documentation check not affected by the agents' motive to detect illegal drugs).

2. No different rule should apply to emergency entries that are based upon impending threats to life or safety. In discussing the "right of the police to respond to emergency situations," this Court has never suggested that either probable cause that a crime has been committed or a non-law-enforcement motive is the *sine qua non* of a lawful entry. *Mincey*, 437 U.S. at 392. The Court has required only a "reasonabl[e] belie[f]" or "objectively reasonable" basis for concluding that a person is in need of aid. *Id.* at 392, 394; see *Hayden*, 387 U.S. at 299-300 (where scope of emergency search was objectively reasonable, officer's failure to attest that his purpose was to search for weapons "can hardly be accorded controlling weight").

In fact, this Court has *never* applied a subjective motivation test to determine the constitutionality under the Fourth Amendment of actions taken by individual officers on the street and in the heat of rapidly developing events—especially when those circumstances threaten the safety of individuals. Quite the opposite, whenever the "on-the-spot observations of the officer on the beat" have required "necessarily swift action," this Court has consistently held the officer's conduct to the objective standard of the "reasonably prudent" officer, *Terry* v. *Ohio*, 392 U.S. 1, 20, 27 (1968). That approach has been applied to other types of warrantless searches of the home that, as here, are designed to protect the safety of individuals.[13] Similarly, the existence of other exigen-

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[13] See *Buie*, 494 U.S. at 334 (protective sweep of a home during an arrest where "articulable facts which, taken together, with the rational inferences from those facts, would warrant a reasonably prudent officer in believing that the area to be swept harbors an individual posing a danger to those on the arrest scene"); *United States* v. *Robinson*, 414 U.S. 218, 225-226, 236 (1973) (scope of a search incident to arrest, which

cies, like hot pursuit or the destruction of evidence, has never been held to depend upon the subjective motivations of individual officers.[14]

Nor has the Court insisted that the actions of police in an emergency have no law enforcement function. Quite the opposite, *Mincey* approved a search for both the "killer" and "other victims" "when the police come upon the scene of a homicide." 437 U.S. at 392.[15] Likewise, for protective sweeps (*Buie, supra)* and searches incident to arrest (*Chimel* v. *California*, 395 U.S. 752 (1969)), no showing of either particularized probable cause of a crime or a non-law-enforcement motive is required before warrantless searches of parts of a home may be undertaken. Rather, the objectively reasonable need to protect lives and safety justifies protective sweeps and searches incident to arrest.

Even when an individual's "fundamental interest in his own life" is at stake, *Tennessee* v. *Garner*, 471 U.S. 1, 9 (1985), the Court has applied the same "objective

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may occur in a home, *Chimel* v. *California*, 395 U.S. 752, 763 (1969), does not turn upon "subjective" fears or concerns of officer).

[14] See *Santana*, 427 U.S. at 42-43 (entry based upon hot pursuit upheld without inquiry into subjective motive); *id.* at 43 (entry also justified by "realistic expectation" that evidence would be destroyed); *Schmerber*, 384 U.S. at 770 (blood test proper where officer "might reasonably have believed" that delay would result in destruction of evidence).

[15] See *Thompson*, 469 U.S. at 22; *Hayden*, 387 U.S. at 298-299 ("The Fourth Amendment does not require police officers to delay *in the course of an investigation* if to do so would gravely endanger their lives or the lives of others.") (emphasis added); see also *California* v. *Ciraolo*, 476 U.S. 207, 212 (1986) (rejecting respondent's challenge to "the authority of government to observe his activity from any vantage point or place if the viewing is motivated by a law enforcement purpose, and not the result of a casual, accidental observation").

reasonableness" standard to review an officer's determination that an individual "poses a threat of serious physical harm, either to the officer or to others" and thus that deadly force should be employed to seize the person and avert the harm. *Brosseau* v. *Haugen*, 543 U.S. 194, 197-198 (2004) (per curiam).[16]

Accordingly, there is no reason for undertaking an inquiry into subjective motive when officers make an entry based on circumstances that reasonably indicate the existence of an emergency. In the context of exigent-circumstances entries accompanied by probable cause of a crime, the central Fourth Amendment goal of avoiding arbitrary police intrusions is met by considering whether the facts known to the officer, viewed objectively, support a reasonable belief that a crime has been, is being, or is about to be committed, and whether the objective facts support immediate action. A parallel objective limitation serves the purpose of avoiding arbitrary action in the emergency aid context: the facts known to the officer must support an objectively reasonable belief that an emergency exists that warrants immediate action by authorities to protect life or safety, to neutralize a harm, or to render appropriate aid. An entry based on objective facts indicating a reasonable belief that there is a "need to act to protect or preserve life or avoid serious injury," *Mincey*, 437 U.S. at 392, is not

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[16] See *Graham*, 490 U.S. at 397 ("As in other Fourth Amendment contexts, * * * the 'reasonableness' inquiry in an excessive force case is an objective one."); see also *Terry*, 392 U.S. at 21-22 (for temporary seizure and pat-down to protect officer safety, "it is imperative that the facts be judged against an objective standard").

"unreasonable" under the Fourth Amendment, which is all the Constitution requires.[17]

The Utah Supreme Court suggested that an inquiry into an officer's subjective purpose is appropriate because the emergency aid doctrine is a "less demanding substitute for a warrant or the more traditional justifications for a warrantless search." Pet. App. 13. But properly understood, an entry to render aid is not based on a "less demanding" showing than a warrant, just a *different* showing. The factual predicate for an emergency-aid entry may or may not coincide with criminal activity, but it must always rest on known facts that make it objectively reasonable for an officer to believe that an immediate need for assistance exists. Once that predicate is met, any further inquiry into subjective motive holds all of the hazards in this context that it does in every other Fourth Amendment setting in which such an inquiry has been rejected.[18]

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[17] The only circumstances in which the Court has held that purpose may be relevant under the Fourth Amendment is when evaluating the "programmatic purpose[s]" of governmental bodies that have prescribed a "general scheme" of searches or seizures far in advance of events on the streets. *City of Indianapolis* v. *Edmond*, 531 U.S. 32, 46 (2000) (addressing a "checkpoint program" adopted by the city); see *Ferguson* v. *City of Charleston*, 532 U.S. 67, 84 (2001); *Whren*, 517 U.S. at 812. In *Edmond*, the Court emphasized that the purpose inquiry "is to be conducted only at the programmatic level and is not an invitation to probe the minds of individual officers acting at the scene." 531 U.S. at 48; compare *id.* at 44 (invalidating program of stopping cars for narcotics-detection purposes along with traffic safety enforcement), with *Illinois* v. *Caballes*, 543 U.S. 405, 408-409 (2005) (upholding without any inquiry into purpose an individual officer's decision to add a drug-detection dog to a traffic stop).

[18] Indeed, one way to conceptualize the emergency aid situation is that the basic requirement that the police have an objectively reasonable belief—*i.e.*, probable cause—does not change, but the object

3. Injecting a subjective element into the Fourth Amendment's reasonableness inquiry for emergency entries to protect lives and safety would not only contravene precedent. It would also invite inconsistent and unpredictable application and chill sound police practices. Subjective inquiries necessarily import variability and instability into the law. The "constitutionality of an [entry] under a given set of known facts will 'vary from place to place and from time to time.'" *Devenpeck*, 543 U.S. at 154 (quoting *Whren*, 517 U.S. at 815). Case law will offer little or no reliable guidance to officers who are "forced to make split-second judgments—in circumstances that are tense, uncertain, and rapidly evolving" about the appropriateness of a search and entry, with the lives and safety of individuals (including officers) hanging in the balance. *Graham* v. *Connor*, 490 U.S. 386, 397 (1989). And officers on the ground can have little confidence that the judicial reconstruction of motives months later "in the peace of a judge's chambers" and "with the 20/20 vision of hindsight" will vindicate the hurried judgments they were forced to make with limited information and seconds to deliberate. *Id.* at 396. When, as often occurs (see, *e.g.*, Pet. App. 35), multiple officers with potentially multiple motives are involved, the inquiry becomes exponentially unwieldy.

Given that an erroneous judgment by officers may result in both the suppression of evidence and exposure to personal liability for the constitutional violation,[19] the

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of the probable cause does change. Rather than requiring an objectively reasonable basis for an officer to believe a crime has been or is about to occur, the officer needs an objectively reasonable basis to believe that an emergency need for assistance exists.

[19] See 42 U.S.C. 1983; *Bivens* v. *Six Unknown Named Agents of Fed. Bureau of Narcotics*, 403 U.S. 388 (1971).

inevitable consequence of such instability and complexity in the law will be hesitation by officers on the scene. And that hesitation could lead to serious and sometimes fatal consequences. For example, as the court here acknowledged, domestic violence calls are "one of the most common and volatile settings for serious injury or death." Pet. App. 22. Not surprisingly, almost all deaths and serious injuries suffered as a result of domestic relationships—*i.e.*, intimate partner and child abuse—occur inside homes, where the victims' ability to obtain the assistance of anyone other than intervening police is remote.[20] Disturbance calls—60% of which involve domestic disputes—also account for almost 31% of all assaults on police officers, and domestic violence calls account for nearly 10% of all officer deaths. U.S. Dep't of Justice, *Law Enforcement Officers Killed and Assaulted: 2003*, at 18-22 (2004).[21]

Those costs are not offset by any discernible constitutional gain in having the lawfulness of entries turn upon later-litigated subjective purposes. If the objective circumstances point to an emergency and officers enter to assist, the infringement on privacy is identical regardless of the subjective state of mind of the individual officers. Inquiries into motives also make the Fourth Amendment's protection "arbitrarily variable." *Devenpeck*, 543 U.S. at 154. "[E]venhanded law enforcement is best achieved by the application of objective

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[20] Matthew R. Durose et al., U.S. Dep't of Justice, *Family Violence Statistics* 9 (2005).

[21] See *Boggess*, 340 N.W.2d at 526 ("But the house was not just the abuser's home, it was also the home of these two children and they had a right to * * * protection and help."). In this case, there is no evidence in the record that the actual owners of the home objected to the officers' entry to bring their unruly guests under control.

standards of conduct, rather than standards that depend upon the subjective state of mind of the officer." *Horton* v. *California*, 496 U.S. 128, 138 (1990).[22]

Some courts have reasoned that probing the officers' motivation prevents pretextual claims of an emergency basis for entry.[23] But "that interest is already served" by the requirements that an impending threat to life or safety objectively exist and that the scope of the entry and search "be circumscribed by the exigencies which justifi[ied] its initiation." *Horton*, 496 U.S. at 139-140 (citing *Mincey*, 437 U.S. at 393).[24] That is particularly true here, because it is commonly the independent actions of third parties—911 calls, cries of "help," gunshots—that trigger an emergency entry. The existence of an objectively reasonable threat to life or safety, in other words, is not particularly amenable to convenient self-generation by the police.

There also is no evidence that, for all its downsides, the inquiry into officers' purposes does any constitutional work. We have found *no* case in which a court

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[22] See *Graham*, 490 U.S. at 397 ("An officer's evil intentions will not make a Fourth Amendment violation out of an objectively reasonable use of force; nor will an officer's good intentions make an objectively unreasonable use of force constitutional."); *Marshall* v. *Barlow's, Inc.*, 436 U.S. 307, 312 (1978) ("If the government intrudes * * *, the privacy interest suffers whether [or not] the government's motivation is to investigate violations of criminal laws.").

[23] See, *e.g.*, *Cervantes*, 219 F.3d at 890; *Ryon*, 108 P.3d at 1045-1046; *Mountford*, 769 A.2d at 645.

[24] See *Hayden*, 387 U.S. at 299; *United States* v. *Russell*, No. 04-10681, 2006 WL 213853, at * 6 (9th Cir. Jan. 30, 2006) (two-minute search of "only areas in which a potential criminal could have been hiding in wait and areas in which an additional victim would have been"); *Rhiger*, 315 F.3d at 1290 (emergency entry limited to preventing explosion; search warrant required for a full search).

held that officers were objectively reasonable in effecting and conducting an emergency entry, but nevertheless violated the Fourth Amendment solely because they lacked a proper motive. Rather, findings of improper motive consistently trail after a ruling that either the decision to go in or the scope of the search was not objectively reasonable.[25] There is no sound basis for breaking from precedent and constitutionalizing under the Fourth Amendment a subjective element that could cost so much to accomplish so little.

II. A WARRANTLESS ENTRY TO STOP AN ONGOING ALTERCATION THAT INCLUDES PHYSICAL ASSAULTS IS OBJECTIVELY REASONABLE

The Utah Supreme Court held that the ongoing physical assault that the officers witnessed "fell short" of justifying an emergency entry because no "*serious* physical injury" had yet been suffered. Pet. App. 13-14; see *id.* at 13 (requiring reasonable belief that an "'unconscious, semi-conscious, or missing person feared injured or dead' is in the home"). That standard is too grudging and, indeed, consigns the police to waiting for dangers to escalate rather than intervening to prevent harm. A warrantless entry is constitutional when, under the totality of the circumstances, the officer reasonably could conclude that intervention is needed to remedy or prevent an impending threat to human life and safety.

A. Police May Take Reasonable Action To Prevent Injury

The Fourth Amendment does not restrict police to the post hoc administration of first aid. Emergency en-

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[25] See, *e.g.*, *Root* v. *Gauper*, 438 F.2d 361, 365 (8th Cir. 1971); *Ryon*, 108 P.3d at 1047-1049; *Ray*, 981 P.2d at 934-938; *United States* v. *Gammon*, 16 M.J. 646, 647-648 (A.F.C.M.R. 1983); *State* v. *Heumiller*, 317 N.W.2d 126, 129 (S.D. 1982).

tries to protect individuals from impending injury are also objectively reasonable. In *Mincey*, the Court "d[id] not question" the right of the police to enter to "*avoid* serious injury," as well as to aid those already injured. 437 U.S. at 392 (emphasis added); see also *Hayden*, 387 U.S. at 299 (emergency entry proper to uncover weapons that "*could* be used against them") (emphasis added); *In re Sealed Case*, 153 F.3d 759, 767 (D.C. Cir. 1998) ("They did not have to wait until they heard shots fired or an occupant scream. By that time, the purpose of permitting immediate entry—preventing such shots and screams—would have been lost.").

That makes sense. The actual spillage of blood or descent into unconsciousness is neither a per se doctrinal nor logical prerequisite to the reasonableness of action under the Fourth Amendment. See *Buie*, *supra* ("protective" sweeps of homes); *Terry*, *supra* (authorizing protective pat downs). Quite the contrary, by ordinary understanding, it would be *unreasonable* for police to stand passively outside a screen door watching and waiting until a trigger is actually pulled or multiple life-endangering blows are thrown before acting.

B. Ongoing Physical Violence Justifies A Warrantless Entry

The Utah Supreme Court reasoned (Pet. App. 19) that the "degree of harm suffered by the adult victim" of the punch was insufficient to justify a warrantless entry. But a quasi-medical assessment of the "degree of harm" to which ongoing violence has risen provides a "very unsatisfactory line[] to require police officers to draw on a moment's notice." *Atwater* v. *City of Lago Vista*, 532 U.S. 318, 350 (2001) (internal quotation marks omitted). First, the resort to physical force sufficiently diminishes the prospect that those involved will resolve the dispute

safely, lawfully, and peacefully on their own, as to justify the intervention of the police. See *Roaden* v. *Kentucky*, 413 U.S. 496, 505 (1973) (warrantless entry may be proper when "assault is being perpetrated"). That is particularly true when, as here, the dispute disrupts neighbors in the middle of the night for a prolonged period of time.[26]

Second, the "serious bodily injury" test is unworkable because "an officer on the street might not be able to tell" with split-second accuracy how serious an injury is. *Atwater*, 532 U.S. at 348. Sometimes a blow to the head causes only a nosebleed; sometimes it causes the

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[26] Whether or not violence is involved, when homeowners or (as here) their guests engage in behavior so disruptive that it trenches upon the privacy of others and disturbs the peace of the neighborhood, that conduct reduces any reasonable privacy expectation that the revelers would be left to their own devices, at least to the extent that the police entry is limited to halting the disturbance. Respondents thus "undermined [their] right to be left alone by projecting loud noises into the neighborhood in the wee hours of the morning," so that the police could not protect their "interest in maintaining the privacy of [the] home without diminishing [the] neighbors' interest in maintaining the privacy of *their* homes. *United States* v. *Rohrig*, 98 F.3d 1506, 1522 (6th Cir. 1996); *Noone* v. *City of Ocean City*, 60 Fed. Appx. 904, 910 (3d Cir. 2003) (unpub.) (where police observed underage drinking and violation of a noise ordinance, "[t]he governmental interest in abating these illegal activities justified warrantless entry"). Because this case involves a physical altercation that posed a threat to life and safety, in addition to substantial disruption of the peace, this case provides no occasion to address the extent to which emergency entries are warranted solely to quell disturbances of the peace or to protect property, see *Rhiger*, 315 F.3d at 1288; cf. *Michigan* v. *Tyler*, *supra*.

brain to bleed.[27] Officers standing on the outside looking in cannot be expected to gauge the difference.

Third, domestic disturbances cannot be analyzed in isolated, single-blow snapshots. Balanced against the historic protection for the privacy of the home is the longstanding recognition of the "'combustible nature of domestic disputes.'" *Fletcher* v. *Town of Clinton*, 196 F.3d 41, 50 (1st Cir. 1999) (quoting *Tierney* v. *Davidson*, 133 F.3d 189, 197 (2d Cir. 1998)). Domestic violence complaints, which account for 60% of all disturbance calls, *Law Enforcement Officers Killed and Assaulted*, *supra*, at 18-22, represent "one of the most potentially dangerous, volatile arrest situations confronting police," *State* v. *Comer*, 51 P.3d 55, 64-65 (Utah Ct. App.) (citation omitted), cert. denied, 59 P.3d 603 (Utah 2002). "In those disputes, violence may be lurking and explode with little warning." *Fletcher*, 196 F.3d at 50; *State* v. *Greene*, 784 P.2d 257, 259 (Ariz. 1989) (in domestic disturbances, "the possibility for physical harm or damage escalates rapidly"). Accordingly, in responding to disturbance calls in the middle of the night, especially when there is reason to believe that alcohol is involved, police often must "make particularly delicate and difficult judgments quickly." *Fletcher*, 196 F.3d at 50. The

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[27] See Malcolm Prior, *One Punch Is All It Takes To Kill*, BBC News Online, June 9, 2004 <http://news.bbc.co.uk/2/hi/uk_news/england/hampshire/dorset/3790037.stm> (lethality increases when alcohol impairs ordinary defenses); cf. *Death Chains Balk Houdini in Desperate Life Battle*, S.F. Chron., Nov. 1, 1926, at 1 ("Student's Blow to Stomach Brought Fatal Illness").

Fourth Amendment should leave room for latitude and police expertise in making such judgments.[28]

The entry in this case was reasonable because the police witnessed ongoing physical violence in circumstances that indicated a need for third-party intervention. What the police encountered was an ongoing "loud, tumultuous" fight, Pet. App. 4, involving five individuals, one of whom was a juvenile, and in which the police witnessed actual physical assaults by both the adults and the juvenile, *id.* at 19. The fight occurred in a kitchen, where the combatants had ready access to knives and other dangerous items.[29] In addition, officers came upon the fight in the middle of the night, with signs of alcohol consumption and knowledge that the combatants' behavior was so disruptive and prolonged that neighbors had complained to the police. *Id.* at 2-3; J.A. 23, 32, 34-35 (police witness illegal alcohol use outside residence; officer attests, based on 16 years of experience, that "approaching a hundred percent" of all disturbance calls "this time of the morning" are "alcohol or drugs related"). By the time of the assaults, the fight had become so "heat[ed]," Pet. App. 18, "belligerent," Def. Mem. in Support of Mot. to Suppress 2, and loud that

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[28] *Welsh* v. *Wisconsin*, 466 U.S. 740 (1984), is not to the contrary. In that case, the Court held that a warrantless, nighttime entry into a residence to arrest a person for driving under the influence was prohibited by the Fourth Amendment. *Id.* at 754-755. The officers' "only" interest in *Welsh*, *id.* at 750, was in making an arrest for an "extremely minor," "nonjailable traffic offense," *id.* at 742, 753, that involved "little remaining threat to the public safety" once the defendant abandoned his car and entered his home, *id.* at 753.

[29] See J.A. 70 ("[T]he kitchen is a dangerous place. There are access to many hidden weapons in a kitchen. We always operate in a kitchen environment in a heightened state of officer safety and security.").

"nobody heard a word," J.A. 40, when the officer "hollered" into the room to identify himself, Pet. App. 2. Under those circumstances, an entry to halt the violence and to protect those involved from further harm was reasonable.

C. Historic Practice Supports Permitting Warrantless Entries To Stop A Fight

Nothing in the history of the Fourth Amendment or the common law "requires the police (and the neighbors) to idly observe and tolerate a late-night, ongoing nuisance to the community while a warrant is sought and obtained." *Rohrig*, 98 F.3d at 1524. To the contrary, the common law long recognized that, "[w]here there is an affray made in a house, * * * during such affray the constable or any other may break open the doors to preserve the peace, and prevent blood shed." 1 Matthew Hale, *The History of the Pleas of the Crown* 588 (1847).[30]

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[30] See 1 William Hawkins, *A Treatise of Pleas of the Crown* 137 (1782) ("And if an Affray be in a House, the Constable may break open the Door to preserve the Peace"); 2 *id.* at 87; 4 William Blackstone, *Commentaries* *145 (the constable "or other similar officer" "may break open doors to suppress an affray" and "to keep the peace"); Horace L. Wilgus, *Arrest Without A Warrant*, 22 Mich. L. Rev. 541, 681 (1924) (arrest authorized "where an officer heard in the night time a loud noise in a house apparently of quarreling amounting to a breach of the peace"); *id.* at 681 n. 393 (citing cases); *id.* at 802-803, 805 (same); Francois-Xavier Martin, *The Office and Authority of a Justice of the Peace, and of Sheriffs, Coroners, etc. According to the Laws of the State of North Carolina* 38 (1791); James Parker, *The Conductor Generalis* 12 (H. Gaine, pub. 1788); John F. Grimke, *The South Carolina Justice of Peace* 21 (1788); William J. Cuddihy, *The Fourth Amendment. Origins and Original Meaning* 1515 & n. 306 (1990) (unpublished Ph.D. dissertation, Claremont Graduate School) (available at Dep't of Justice Library).

Later common-law decisions are to the same effect. In *Commonwealth* v. *Tobin*, 108 Mass. 426 (1871), for example, Massachusetts' highest court held that, when police officers "heard a loud noise, apparently of quarrelling, and traced it to the defendant's house," where they found four persons, including the defendant who "had his arm raised as if to strike his wife," the officers were justified in entering without a warrant. *Id.* at 426-427. The court explained:

> A constable has the right, by virtue of his office, and without any warrant, to enter any house, the door of which is unfastened, and in which there is a noise amounting to a breach of the peace, and to arrest any person engaged in an affray or in committing an assault in his presence.

Id. at 429.[31]

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[31] See also *Commonwealth* v. *Krubeck*, 8 Pa. D. 521, 522-523 (Pa. Quar. Sess. Ct. 1899) ("[T]he peace officer, by virtue of his office and without a warrant, may enter any house or inclosure, the entrance to which is unfastened, and in which there is a noise amounting to a breach of the peace, and may arrest therein any person whom he finds engaged in an affray or in committing an assault in his presence; and if there be an affray in progress within the inclosure, he may even break open the doors to keep the peace and prevent the danger."); *Ford* v. *Breen*, 53 N.E. 136 (Mass. 1899) (in-home arrest without warrant proper where defendant "was in a state of intoxication, committing a breach of the peace or disturbing others"); *Hawkins* v. *Lutton*, 70 N.W. 483, 484-485 (Wis. 1897) (police officers, without a warrant, may enter house and arrest occupants for disturbing the peace in the presence of the officers); *Dilger* v. *Commonwealth*, 11 S.W. 651 (Ky. 1889) (where police overheard cries for help from woman being beaten, entry and arrest without a warrant was proper); *Hancock* v. *Baker*, 126 Eng. Rep. 1270 (C.P. 1800) (private persons may break into a house to prevent an

D. The Officers' No-Knock Entry Was Proper

Finally, the Utah Supreme Court erred in requiring the officers to knock before effecting an emergency entry. Pet. App. 20. The record is clear that, in all likelihood, knocking would have been futile. *Id.* at 19-20, 39, 47. In fact, the melee was so loud that respondents did not even hear when the officers opened the screen door and "hollered" to identify themselves. In this context, that announcement served the same purpose as a knock on the screen door. If a police officer's shouts cannot rise above the din, there is no sound basis for requiring the emptier gesture of rapping on a screen door. See *Richards* v. *Wisconsin*, 520 U.S. 385, 394 (1997) (pre-entry knock not required when it would be "futile"); *Wayne*, 318 F.2d at 213 (opinion of Burger, J.) ("[T]he law does not require futile, useless things to be done."). In addition, "the presumption in favor of announcement * * * yield[s] under circumstances presenting a threat of physical violence." *Wilson* v. *Arkansas*, 514 U.S. 927, 936 (1995).

In this kind of emergency situation, a requirement that the police not enter unless they knock and are allowed in would be badly out of place and would leave police "in an almost impossible spot." *Atwater*, 532 U.S. at 350. An entry could result in the suppression of evidence or personal liability. At the same time, the neighbors whose peace in their own homes was continuing to be disturbed "would doubtlessly have been surprised —and disappointed—if the officers had done" nothing more than knock ineffectually. *Carlson*, 548 N.W.2d at 143. Had the fight escalated and a more serious or fatal

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attempted murder, where the assault "broke the peace" and neighbors heard the wife's cries for help, which provided "reasonable cause" for the entry); *id.* at 1271-1273.

injury ensued or a history of domestic violence or child abuse later been uncovered, the officers might have been censured or perhaps sued under state law for "knowingly refrain[ing] from interference in such violence" when their knock went unanswered. *Thurman* v. *City of Torrington*, 595 F. Supp. 1521, 1528 (D. Conn. 1984). As the responding officer explained, "[f]or us to walk away, to leave the scene at that time when we could hear people yelling for help inside, saying get off, stop, and hearing the thumping and crashing * * * [would] have been derelict in our duties." J.A. 29.[12]

CONCLUSION

The judgment of the Supreme Court of Utah should be reversed.

Respectfully submitted.

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[12] If, on the other hand, the only constitutional error was the officers' failure to knock before entering, there is a substantial question whether the exclusionary rule applies. See *Hudson* v. *Michigan*, No. 04-1360 (argued Jan. 9, 2006); see also *United States* v. *Leon*, 468 U.S. 897, 919-920 (1984) ("Where the officer's conduct is objectively reasonable, * * * [e]xcluding the evidence can in no way affect his future conduct unless it is to make him less willing to do his duty.") (quotation marks omitted).